



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MINUTES STATE WATER CONTROL BOARD

December 14,, 2009
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
Lou Ann Jessee Wallace
Robert H. Wayland, III
Roberta A. Kellam

Komal K. Jain, Vice-Chair
John B. Thompson
William B. Bott

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

John Butcher, Special Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on December 14, 2009, at 9:35 a.m., recessed at 10:30 a.m., reconvened at 10:40 a.m., recessed at 11:20 a.m., reconvened at 12:18 p.m., recessed at 2:03 p.m., reconvened at 2:11 p.m. and adjourned at 3:30 p.m.



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 14, 2009

MINUTE NO. 1 – Minutes

The Board approved the Minutes from the October 26-27, 2009, meeting.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 14, 2009

MINUTE NO. 2 – Final Exempt Action Amendments to the Virginia Pollutant Discharge Elimination System Regulation for Concentrated Animal Feeding Operations

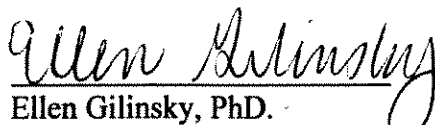
Betsy Bowles with the Office of Land Application Programs presented the final amendments to the Virginia Pollutant Discharge Elimination System Regulation for Concentrated Animal Feeding Operations as contained in the Board books along with additional amendments presented during the meeting. The Board was asked to adopt the final amendments to the Virginia Pollutant Discharge Elimination System Regulation for Concentrated Animal Feeding Operations as presented.

A discussion by the board followed the staff presentation.

Board Action:

Based upon the information provided by staff, the Board voted unanimously to accept the staff recommendations:

1. Adopt the final amendments to the Virginia Pollutant Discharge Elimination System Regulation for Concentrated Animal Feeding Operations as contained in the Board books with the additional amendments presented during the meeting which were made in response to the reviews by the Attorney General's Office and the Environmental Protection Agency.


Ellen Gilinsky, PhD.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF December 14, 2009

MINUTE NO. 3 - Regulations – Proposed: Fee Regulation, VPDES Permit Regulation and VPA Permit Regulation - Biosolids Amendments

Prior to the meeting, the Board was provided with proposed amendments to the Fees for Permits and Certificates regulation (9VAC25-20), Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32) relating to land application of biosolids. These amendments were proposed by staff after several meetings with a technical advisory committee between October, 2008 and September, 2009.

Neil Zahradka gave the staff presentation and recommendation, including a change request submitted by the Virginia Department of Conservation. The Board was requested to proceed to notice of public comment and hearing on proposed amendments to the Fees for Permits and Certificates regulation (9VAC25-10 et seq.), the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the VPA Permit Regulation (9VAC25-32-10 et seq.).

Board Decision

Based on the briefing materials and the staff presentation, the Board voted unanimously to accept the staff recommendation to proceed to notice of public comment and hearing on proposed amendments to the Fees for Permits and Certificates regulation (9VAC25-10 et seq.), the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the VPA Permit Regulation (9VAC25-32-10 et seq.).

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 14, 2009

MINUTE NO. 4 TMDL Implementation Plan – Straight Creek

Alan Pollock (DEQ Office of Water Quality Programs) made the staff presentation regarding the TMDL Implementation Plan for Straight Creek located in Lee County. This agenda item is a follow-up to a Board action taken at the Board's March 2007 meeting. At that meeting the Board granted approval, subject to certain conditions, to the Virginia Mining Interests Group ["WMIG"] to conduct a Use Attainability Analysis ["UAA"] for aquatic life in Straight Creek according to criteria established pursuant to the Clean Water Act and in conformance with the Virginia Water Quality Standards. One of the conditions included in that action was for Board approval of the TMDL Implementation Plan for Straight Creek.

Mr. Pollock explained that the TMDLs for the bacteria and benthic impairments were approved by the Board in March 2006 and EPA approved them in June 2006. The Straight Creek Implementation Plan ["IP"] was developed by the VMIG with input from various state agencies and local stakeholders. The initial draft of the IP was submitted in December 2007, with four subsequent revisions. Two public meetings were held during the development process, with the second public meeting on the final TMDL IP held May 26, 2009. DEQ staff and the Straight Creek Technical Advisory Committee believe the final draft TMDL IP is comprehensive and addresses the provisions of the TMDL.

Implementation actions that are identified address both the bacterial and benthic impairments. Implementation of the IP is divided into two phases, scheduled over a 20 year period. To address excessive bacteria levels, the IP recommends elimination of straight pipes and failing septic systems in Phase I. If necessary, reduction of livestock related sources, and additional residential and urban sources, such as pets, would take place during Phase II.

To address the benthic impairment, the IP recommends addressing three sources of Total Suspended Solids and Total Dissolved Solids during Phase I: 1. abandoned mine lands (AML), 2. disturbed forest lands, and 3. channel erosion. Elimination of straight pipes will also result in

benefits to the benthic aquatic life community. Phase II continues work in these areas, using adaptive management to address additional AML sites, disturbed forest areas, including Oil and Gas . Cost estimates are presented in the IP report for each Phase.

Staff also provided the Board with a brief status report on the UAA study. In accordance with the Board's action in March 2007, a draft UAA Study Plan was submitted in September 2007. Comments on the draft study plan were provided by EPA, US Fish & Wildlife Service, Chesapeake Bay Foundation, and the Southern Environmental Law Center. A revised UAA study plan was received in November 2008. At that time DEQ staff informed the VMIG that further action on the UAA Study Plan would wait until the Board approved the TMDL IP.

The current timeline in the study plan has work beginning 90 days after DEQ approval of the study plan, 2 years until predictive tool development, and a final report with recommendations is scheduled 3 years after initiation of the study.

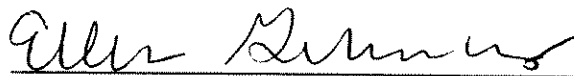
Mr. Pollock reported that DEQ staff recently received an October 2009 report by EPA that evaluates the existing and designated uses of Straight Creek. Staff indicated that any action DEQ takes on the UAA Study Plan will communicate the EPA findings to the VMIG.

Staff Recommendation

Staff recommended the Board approve the Straight Creek Implementation Plan, revised March/April 2009.

Board Decision

The Board voted unanimously in favor of the staff recommendation.



Ellen Gilinsky, Ph.D.
Director
Water Division



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MINUTE NO. 5 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that the following regulated parties were reported as being in significant noncompliance for the quarter ending June 30, 2009.

1. Arlington County, Arlington County Water Pollution Control Facility, failure to meet ammonia nitrogen effluent limits in April and June 2009.
2. Town of Farmville, Farmville Wastewater Treatment Plant, failure to meet copper effluent limit in March, May and June 2009.

The Board accepted the report.

A handwritten signature in cursive script that reads "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 6 – VPDES Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. The Town of Farmville
2. Hurricane Ridge Dairy Farm
3. Lakewood Partners, LLC
4. One Stop Trailer Park
5. Vitex Packaging, Inc.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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L. Preston Byrnes, III
Secretary of Natural Resources

David K. Javor
Director

(804) 598-4001
1-800-692-5182

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MINUTE NO. 7: Mountain Run Golf, Inc. and Mountain Run, LLC Consent Special Order

Lee M. Crowell, Wetlands Enforcement Program Manager, presented to the Board the Consent Special Order for Mountain Run Golf, Inc. and Mountain Run, LLC. After some discussion of the contents of the Order and the procedure for determining the ability to pay a civil charge, the Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

Lee M. Crowell
Wetlands Enforcement Program Manager
Division of Enforcement



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Secretary of Natural Resources

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Director

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MINUTE NO. 8 - VWP Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. AIM Cooper Construction, Inc.
2. J.W. Holdings, Inc. & Craddock Oaks Dev., Inc.
3. West Crossing, LLC
4. HHHunt Corp.
5. Galberry Corp.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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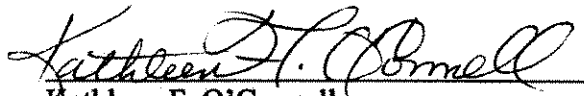
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MINUTE NO. 9 - Consent Special Order, Other

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for:

1. Zota Petroleums, LLC

The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.


Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE 10 – FY 2010 VCWRLF Loan Authorizations

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated December 9, 2009. The memorandum identified the staff's recommended loan amounts, terms, and interest rates for 17 projects recommended for FY 2010 Virginia Clean Water Revolving Loan Fund assistance.

Mr. Gills began his presentation by summarizing the actions taken by the Board at its October 2009 meeting, of targeting 17 projects for FY 2010 assistance and directing the staff to present the Board's tentative list for public comment. He relayed that a public meeting was held on November 30, 2009 and that all comments received were in support of the funding list. Mr. Gills explained that he had met with the potential FY 2010 loan recipients to verify the financial data used to evaluate the local impact and that the staff had completed its user charge impact analyses for the targeted recipients.

Based on the initial meetings with the applicants, the staff recommended three modifications to the previously-approved funding list. The City of Covington had requested that their loan request be increased to \$6,000,000 in order to address infiltration/inflow problems that were resulting in sewage overflows, which the staff supported. Also, based on the receipt of construction bids as well as some funding from the American Recovery and Reinvestment Act, the loan needs for the Town of Richlands and Wise County had been reduced. These changes resulted in a revised total loan amount of \$202,150,267 for the 17 projects.

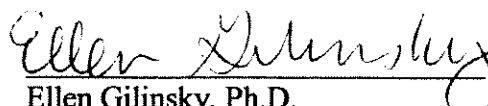
Mr. Gills explained that program policy calls for the program's ceiling rate to be set at 1% below the municipal revenue bond market. Since the program will have to leverage this year and sell bonds to fund these projects, the staff recommended that the FY 2010 ceiling rate not be set until after those bonds are sold in the spring.

Mr. Gills then made the Board aware of new requirements that had been placed on the program through the FY 2010 federal appropriation bill. Most notable were the stipulations that at least \$8.3 million of this year's federal grant had to go to green reserve type projects and at least \$6.5 million of that grant had to be provided as principal forgiveness. He stated that since only one of the 2010 projects met the green reserve criteria, DEQ would have to go out with a new

solicitation for green reserve only projects and come back to the Board with additional recommendations. He also discussed the staff's evaluation of the projects with regard to how to best distribute the principal forgiveness funds. Mr. Gills explained that 6 of the 8 hardship projects had already received significant amounts of principal forgiveness funds this year and that there was a need to retain funds to apply to the additional green reserve projects. As such, he recommended that \$4.15 million be retained for the green reserve solicitation and the remaining \$2.35 million be divided between the City of Norfolk and City of Covington on a prorata basis.

Board Decision: After brief discussion, the Board voted unanimously to authorize the execution of the 17 loans at the amounts, rates, and terms listed below. Loan closings are subject to the receipt of favorable financial capability analysis reports and supporting recommendations from VRA. In addition, the Board agreed that the ceiling rate would be set at 1% below the all inclusive true interest cost on the leverage bonds once they are sold.

	Locality	Loan Amount	Rates & Loan Terms
1	HRSD/Army Base	\$50,000,000	C, 20 years
2	Town of New Market	\$2,980,000	0%, 20 years
3	City of Richmond	\$20,000,000	0%, 20 years
4	City of Lynchburg	\$13,100,000	0%, 30 years
5	Town of Cape Charles	\$6,316,037	0%, 20 years
6	City of Norfolk	\$8,000,000	\$6,650,000 @0%, 20yrs \$1,350,000 PF
7	Arlington County	\$35,000,000	C, 20 years
8	Wise County PSA	\$950,320	0%, 20 years
9	Town of Richlands	\$1,253,910	0%, 20 years
10	City of Covington	\$6,000,000	\$5,000,000 @0%, 20yrs \$1,000,000 PF
11	HRSD/Williamsburg	\$9,400,000	C, 20 years
12	HRSD/Boat Harbor	\$8,400,000	C, 20 years
13	City of Newport News	\$3,200,000	C, 20 years
14	City of Charlottesville	\$7,000,000	C, 20 years
15	Rivanna Water and Sewer Authority	\$30,200,000	C, 20 years
16	Town of Mineral	\$60,000	C, 20 years
17	Meadowview Biological Research	\$290,000	3%, 20 years
	Total Request	\$ 202,150,267	C= Ceiling Rate PF= Principal Forgiveness


Ellen Gilinsky, Ph.D.
Director
Water Division



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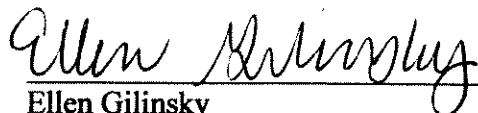
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Minute 11 – Water Division Director Report

Ellen Gilinsky, Water Division Director, gave the Board a brief update on the status of meetings and work products related to the Chesapeake Bay TMDL being conducted by EPA with assistance from the Bay states.

The Board was informed that the City of Newport News requested, and was granted, a termination of their permit to construct and operate the King William Reservoir.


Ellen Gilinsky
Director, Water Division



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MINUTE NO. 12 – Plasticulture MOA

Melanie D. Davenport, Director of the Division of Enforcement, updated the Board on the status of the Memorandum of Agreement (MOA) being negotiated with the tomato growers of the Eastern Shore.

The Board asked clarifying questions and offered comments on the draft MOA. In addition, the Board heard from Ms. Terrie Suit, representing the growers, Mr. John Daniel, Mr. Tom Walker and Ms. Heather Lusk representing the petitioner, Mr. Darrell Marshall of the Virginia Department of Agriculture and Consumer Services, and Mr. Wilmer Stoneman, representing the Virginia Farm Bureau.

Based on the staff presentation and answers to questions, comments from the public and Board discussion, the Board voted unanimously to direct the staff to continue working with the parties to finalize a Memorandum of Agreement. The Board, by a vote of 4 to 3, failed to adopt a motion to withdraw its Notice of Intended Regulatory Action (NOIRA). The Board unanimously directed staff to extend the public comment period on the NOIRA to ten days beyond the date of the Board's spring meeting.

A handwritten signature in cursive script that reads "Melanie D. Davenport".

Melanie D. Davenport

Director

Division of Enforcement



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MINUTE NO. 13 – Public Forum

No one appeared during the public forum.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 14, 2009

MINUTE NO. 14 – Meetings

The Board set April 19-20, 2010 and July 12-13, 2010, as the date of their next meetings.


Cindy M. Berndt